STATE OF MICHIGAN

COURT OF APPEALS

JOHN L. HAMILTON,

Plaintiff-Appellant,

v

DETROIT NEWS, INC. and DOUG GUTHRIE,

Defendants-Appellees.

UNPUBLISHED
August 26, 2008

No. 278989
Wayne Circuit Court
LC No. 06-629018-NO

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(8) and (C)(10) and dismissing plaintiff's claims for libel, negligence, and invasion of privacy. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is the owner of several topless dancing establishments in Wayne County. This lawsuit concerns the publication of an article about plaintiff, authored by defendant Guthrie, in defendant Detroit News' newspaper. In the article, which describes plaintiff as the "king of Downriver topless dance clubs" and states that he "talks openly about keeping hundreds of thousands of dollars in cash in his homes," it is reported that he was the victim of an armed robbery at his home and that $70,000 cash was stolen. Plaintiff is quoted as saying that the robbers failed to find $200,000 in a bedroom closet; however, the article reported that police believed the amount was closer to $500,000. Plaintiff stated he was being hounded by someone demanding money in exchange for inside tips about the robbery, and that he could not get authorities to authorize a warrant in the case "because Wayne County's prosecutor [was] twisting his arm to get $50,000" that was seized during a 2002 raid at plaintiff's Van Buren club, Leggs Lounge, "that occurred after police responded to a call of a patron dying of a heart attack during a lap dance." The article further reported that "[a] racketeering case is pending in U.S. District Court alleging officers found cocaine, evidence of a gambling ring and $1.7 million cash at the club."

Plaintiff filed a complaint alleging that several statements in the article were untrue and defamatory. Plaintiff also brought claims of negligence and invasion of privacy based on the statements in the article concerning the money contained in his bedroom closet and the seizure of $1.7 million from his club. The trial court granted defendants' motion for summary disposition,

holding that none of the complained-of statements were defamatory and that plaintiff was a public figure.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings standing alone. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) may be granted if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004).

Summary disposition is an essential tool courts must use to protect First Amendment rights. *Kefgen v Davidson*, 241 Mich App 611, 613; 617 NW2d 351 (2000). Although the proffered evidence must be viewed in the light most favorable to the nonmoving party, in cases involving constitutionally protected discourse, a reviewing court is required to make an independent examination of the record to ensure against forbidden intrusions into the field of free expression. *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 253; 487 NW2d 205 (1992) ("*Rouch II*"); *Kevorkian v American Medical Ass'n*, 237 Mich App 1, 5; 602 NW2d 233 (1999).

In general, a plaintiff may establish a claim of libel by demonstrating 1) a false and defamatory statement concerning the plaintiff, 2) an unprivileged communication to a third party, 3) fault amounting to at least negligence on the part of the publisher, and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. *Rouch II*, *supra* at 251; *Locricchio v Evening News Ass'n*, 438 Mich 84, 115-116; 476 NW2d 112 (1991); *Kefgen*, *supra* at 617.

Plaintiff first contends that defendants' motion, to the extent that it was based on MCR 2.116(C)(10), was not properly before the trial court because it was not supported by an "affidavit based on personal knowledge." However, there is no such requirement. Rather, pursuant to MCR 2.116(G)(3)(b), a motion brought under (C)(10) requires the presentation of "[a]ffidavits, depositions, admissions, *or other documentary evidence* in support of the grounds asserted in the motion."

Plaintiff further argues that the newspaper articles, police reports, and court documents submitted by defendants in support of their motion for summary disposition constituted inadmissible hearsay that should not have been considered by the trial court in granting the motion. We disagree. Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted. MRE 801(c). The documents submitted by defendants were not provided to prove that any particular factual assertions were true, but were instead provided for the purposes of establishing that plaintiff was

a public figure and that the statements in the article were privileged as "a fair and true report of matters of public record" within the meaning of MCL 600.2911(3).[1]

Plaintiff next contends the trial court erred in granting summary disposition on the ground that he is a limited-purpose public figure and was therefore required to allege and prove actual malice. We disagree. "Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures" for purposes of defamation law. *Gertz v Robert Welch, Inc*, 418 US 323, 342; 94 S Ct 2997; 41 L Ed 2d 789 (1974). If a plaintiff is a public figure, he must establish by clear and convincing evidence that the defendant published the defamatory statement with actual malice. *Rouch II*, *supra* at 251; *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 32; 627 NW2d 5 (2001). Actual malice is actual knowledge of falsity or reckless disregard of whether the statement is false. *Collins*, *supra* at 32-33, quoting MCL 600.2911(6).

A private person can become a limited-purpose public figure when he voluntarily injects himself or is drawn into a particular controversy and assumes a special prominence in the resolution of that public controversy. *Gertz*, *supra*, 418 US at 345; *Time, Inc v Firestone*, 424 US 448, 453; 96 S Ct 958; 47 L Ed 2d 154 (1976); *New Franklin Enterprises v Sabo*, 192 Mich App 219, 222; 480 NW2d 326 (1991). In determining whether a plaintiff qualifies as a limited-purpose public figure, the court must look to the nature and extent of the individual's participation in the controversy. *New Franklin Enterprises*, *supra* at 222; see, also, *Hodgins v Times Herald Co*, 169 Mich App 245, 256-257; 425 NW2d 522 (1988).

The evidence demonstrates that plaintiff voluntarily injected himself into the controversy over his operation of adult entertainment facilities, as well as the controversy surrounding the illegal activities that took place at one of his strip clubs and the lawsuits arising from those activities. As defendants note, plaintiff had been in the public eye for at least 10 years prior to the publication of the allegedly defamatory article. The newspaper articles submitted by defendants demonstrate that plaintiff's various adult entertainment clubs were often the target of community and political efforts to ban such establishments and that plaintiff readily provided comments to newspaper reporters in response to these efforts. Plaintiff also used the newspapers as a forum for personal commentary and for publicizing his charity work. Similarly, following the death of a patron at Leggs Lounge and the resulting search and civil and criminal litigation, plaintiff projected himself into the public eye by speaking with reporters in defense of himself, by publicizing his net worth and his charity efforts, and by initiating a federal civil rights lawsuit against several governmental officials. Indeed, plaintiff's comments as reported in the very article that spurred this lawsuit, in which he attempted to garner support for his crusade to have an arrest warrant issued following the robbery of his home, demonstrate his willingness to use the news media to gain notoriety. By "inviting attention and comment" and courting media interviews in this manner, plaintiff "thrust[] [himself] to the forefront of [a] particular public controvers[y] in order to influence the resolution of the issues involved," *Gertz*, *supra* at 345, and is therefore appropriately classified as a limited-purpose public figure. See *Ireland v*

[1] MCL 600.2911(3) provides, in relevant part, that "[d]amages shall not be awarded in a libel action for the publication . . . of a fair and true report of matters of public record. . . ."

Edwards, 230 Mich App 607, 615 n 6; 584 NW2d 632 (1998); *Hayes v Booth Newspapers, Inc*, 97 Mich App 758, 773-774; 295 NW2d 858 (1980).

Plaintiff did not allege, and he does not now argue, that defendants acted with actual malice in publishing the allegedly defamatory article. Accordingly, summary disposition was appropriately granted on the basis of his status as a public figure.[2]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly

[2] The additional claims of negligence and false-light invasion of privacy are premised on the publication of these allegedly defamatory statements and were therefore likewise properly dismissed for the same reason. See *Battaglieri v Mackinac Center for Public Policy*, 261 Mich *Ireland, supra* at 624-625 (a plaintiff may not circumvent First Amendment limitations by recasting a defamation claim as a different tort).